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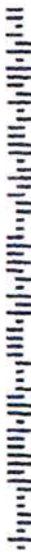
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Municipal Library Boards

Municipal Library Boards are different from County Library Boards, but they do share many of the same statutory powers and duties. In this article, some of the similarities are highlighted.



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AN OVERVIEW OF

Claire Silverman, Legal Counsel

Libraries are a tremendous resource and data shows that Wisconsin residents value and use public libraries. More than 6 in 10 state residents are registered library users and each week, an average number of 647,000 visits are made to Wisconsin public libraries.¹

Most of Wisconsin's 384 public libraries are municipal libraries. The establishment and operation of public libraries is governed by chapter 43 of the Wisconsin Statutes. Municipal libraries are administered by local library boards. The provisions most relevant to municipal libraries and municipal library boards are found in secs. 43.52 (municipal libraries), 43.54 (municipal library board composition) and 43.58 (powers and duties of library boards).

Chapter 43 gives library boards broad control over library property and library employees. As a result, questions often arise concerning a library board's powers in relation to the municipal governing body. This Comment provides a general overview of library boards, including municipal library board authority over library property and the expenditure of library funds and the hiring and compensation of library employees.

It also explains that while a governing body may be able to adopt a charter ordinance asserting greater control over a municipal library, the enactment of such a charter ordinance carries the risk that a library will face a reduction or withdrawal of state aid, or expulsion from a public library system.

I. LIBRARY BOARD COMPOSITION

Library boards vary in size and composition depending on a number of factors. The composition of library boards in first class cities (Milwaukee) is governed by Wis. Stat. sec. 43.54(1)(am). Library boards in cities of the second or third class consist of nine members, although the common council may, by a two-thirds vote, reduce the number of members to seven.² Library boards in cities of the fourth class consist of seven members. Village library boards are composed of five members, although two additional members may be appointed so that the board has seven members.³ Joint library boards⁴ consist of 7 to 11 members.

Members of the library board must be residents of the municipality, except that not more than two members may be residents of other municipalities.⁵ One member of the library board must be a school district administra-

This article revises and updates an article written by then-Legal Counsel Curtis Witynski and published in the January 2001 issue of *the Municipality*.

1. From *Fast Facts About Wisconsin Public Libraries*, Department of Public Instruction, based on 2012 Wisconsin Public Library Annual Report Data available online at <http://pld.dpi.wi.gov/pld_dm-lib-stat>.
2. Wis. Stat. sec. 43.54(1)(a) and (3).
3. Wis. Stat. sec. 43.54(1).
4. Joint libraries may be created by any two or more municipalities or by a county and one or more municipalities located in whole or in part in the county. Wis. Stat. sec. 43.52. A joint library may not be established unless it includes at least one municipality with a public library established before May 8, 1990. Wis. Stat. sec. 43.53(3).
5. Wis. Stat. sec. 43.54(1)(a).

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tor or his or her representative, and no more than one member of the municipal governing body may serve on the library board at any one time.⁶ In addition, joint library agreements must, among other things, contain a procedure for adjusting the membership of the joint library board to ensure that it remains representative of the populations of the participating municipalities as shown by the most recent federal census.

Under Wis. Stat. sec. 43.60(3), the county in which the library is located in whole or in part may appoint up to five additional members if the county's

annual appropriation to the library represents a certain percentage of the annual sum appropriated to the municipal library.⁷

Municipal library board members are appointed by the mayor or village president, with the approval of the governing body. Terms are staggered when the board is initially created and board members are first appointed, but subsequent board members are appointed for three-year terms.⁸ In the absence of an ordinance providing to the contrary, board members' terms begin May 1.⁹

II. COMPENSATION OF BOARD MEMBERS

Library board members may not be compensated for their services, but members may be reimbursed for expenses incurred in performing duties outside the municipality if authorized by the library board. Members may receive per diem, mileage and other necessary expenses incurred in performing their duties if authorized by the library board and the municipal governing body.¹⁰

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6. Wis. Stat. sec. 43.54(1)(c).

7. Wis. Stat. sec. 43.60(3). If the annual sum appropriated by the county to the public library is an amount equal to at least one-sixth but less than one-third of the portion of the annual sum appropriated to the public library by any municipality in which the public library is located during the preceding fiscal year, the county chairperson, with the county board's approval, can appoint one county resident as an additional member of the library board. If the county's annual appropriation is equal to at least one-third but less than one-half of the annual sum appropriated to the public library by any municipality, the county can appoint two additional members. If the annual sum appropriated by the county is equal to at least one-half but less than two-thirds, the county can appoint three additional members. If the annual sum appropriated by the county to the library is equal to at least two-thirds but less than the annual sum appropriated to the public library by any municipality in which the public library is located, the county can appoint four additional members. Finally, if the annual sum appropriated by the county to the public library is equal to at least the annual sum appropriated to the library by any municipality in which the public library is located, the county can appoint five additional members. For a joint public library of two or more municipalities, the "annual sum appropriated to the public library by any municipality in which the public library is located" is the total sum appropriated by all of the municipalities participating in the joint library. A county chairperson may appoint a county supervisor to serve as an additional board member pursuant to Wis. Stat. sec. 43.60(3) but no more than one county supervisor so appointed may serve on the library board at the same time.

8. Wis. Stat. sec. 43.54(1)(b).

9. See Wis. Stat. secs. 62.09(5)(a) and 61.23(2).

10. Wis. Stat. sec. 43.54(1)(d).

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III. LIBRARY BOARD POWERS

A. Control Over Library Funds

The library board has exclusive control of the expenditure of all moneys appropriated by the governing body or donated to the library fund.¹¹ This power of the library board to control funds has been interpreted by the attorney general to include the authority to contract for necessary goods and services for the public library.¹²

Although the library board has exclusive control of the moneys appropriated for the library fund, the board does not make actual disbursements from the appropriation. Rather, the board audits and approves vouchers for expenditures and forwards these to the municipal clerk, who follows the ordinary procedure for disbursing municipal funds under sec. 66.0607 or 66.0609 if adopted.¹³

Thus, under the scheme set out in the statutes, the library board has control over the use of the money appropriated to the fund, but it does not sign the checks or maintain physical control over the actual dollars and cents appropriated to the fund.¹⁴

Library boards probably have disbursement authority, however, with respect to donated funds held in trust by the library board under sec. 43.58(7). The library board is authorized to receive, manage and dispose of gifts

and donations for library purposes.¹⁵

When a gift or donation is made to a public library, library board members are considered special trustees of such property. The library board may pay or transfer the gift to the treasurer of the municipality or county in which the public library is situated, may entrust any funds therefrom to a public depository under ch. 34 or may pay or transfer that gift to the library board's financial secretary or, if certain conditions are met, to a charitable 501(c)(3) organization whose purpose is providing financial or material support to the public library.¹⁶ The financial secretary may invest the funds as provided in Wis. Stat. sec. 66.0603.

The League has interpreted the above provisions to mean that if a library board deposits gifts it receives in a public depository, the board may write checks disbursing such funds on its own without involving the municipal clerk.¹⁷

In 1998, Wisconsin law governing libraries was revised to require certain counties to make payments to libraries within those counties. The law was revised again in 2006¹⁸ to require those certain counties to also make payments to libraries in adjacent counties. Under the law, counties with a population of less than 500,000 that do not maintain a consolidated public library for the county and that have residents who are not residents of a municipality that maintains a public library must annually pay each public library

in the county and adjacent counties a certain amount based on a statutory formula.¹⁹ The League has been asked whether county payments to libraries are controlled by the municipality or the library. The answer is that the county payment must be made to the library, either directly or to the library system which then pays the library. The check must then be deposited with the municipality in a fund under library board control.²⁰

In the past, the law required municipalities to maintain library funding at a level of at least the average of the previous three years as a statutory requirement of library system membership. The Maintenance of Effort requirement was repealed by 2011 Wis. Act 32, sec. 1173, but was resurrected in the 2013-2015 State budget as a factor for joint libraries seeking exemption from the county tax levied for library purposes. When the Maintenance of Effort requirement was in effect, we were frequently asked whether a municipality could reduce the amount it appropriated to its library by the amount paid by the county. We opined that county funding could not be included in calculating a municipality's maintenance of effort funding requirement.

B. Control Over Library Property

The library board has exclusive control and custody of all lands, buildings and other property given or granted to,

11. Wis. Stat. sec. 43.58(1).

12. 77 Op. Att'y Gen. 193 (1988).

13. Wis. Stat. sec. 43.58(2).

14. See Libraries 44.

15. Wis. Stat. sec. 43.58(7).

16. Wis. Stat. sec. 43.58(7).

17. See Libraries 44.

18. 2005 Wis. Act 420.

19. Wis. Stat. Sec. 43.12(1).

20. Sec. 43.12(2) and (3).

21. Wis. Stat. sec. 43.58(1).

or otherwise acquired or leased by, the municipality for library purposes.²¹

The library board may, if authorized by the governing body, have exclusive control over the purchase of a site and the erection of a library building.²² Otherwise, the municipal governing body, in the absence of a specific grant of authority to the library board, has the sole right to purchase or acquire sites or erect buildings for library purposes.²³ However, in the case of a gift for a library building, the library board has the exclusive right to select and contract for the purchase of a site.²⁴

C. Control Over Library Employees

With respect to the library board's authority in the area of library employees, sec. 43.58(4) provides in part as follows:

[T]he library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

It is apparent from this that the library board has control over the hiring, firing and fixing of wages of library employees. Thus, we have concluded in the past that it is the library board, not the municipality, which negoti-

ates with a union representing library employees.²⁵ The Wisconsin Employment Relations Commission has concluded similarly.

On the other hand, municipal governing bodies retain some control over the number of library employees and compensation paid to such employees by virtue of the fact that they control the purse strings. Chances are good that a municipality's annual appropriation constitutes a substantial portion of the library fund, and probably is the main source for the payment of library salaries.

In years past, a municipality's ability to control the number of library employees and their salary by a reduction in funding was limited by a requirement in sec. 43.15(4)(c)5 to fund libraries at a level not lower than the average of the previous three years in order to retain membership in a public library system and remain eligible for state funding. See sec. 43.24(3). The "maintenance of effort" requirement was repealed by 2011 Wis. Act 32, sec. 1173.

While it is clear that the library board has control over the hiring, firing and compensation paid to library employees, we have concluded in the past that library employees are municipal employees and therefore subject to the same terms or conditions of employ-

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22. Wis. Stat. sec. 43.58(1).

23. Wis. Stat. sec. 43.52(3).

24. Wis. Stat. sec. 43.58(7)(e). For a discussion of the interplay between secs. 43.58(1), 43.54(3) and 43.58(7)(e) in the context of constructing an addition to a library, see Libraries 23.

25. See Libraries 43.



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ment that apply to other municipal employees.²⁶

Support for this conclusion exists in a 1939 attorney general opinion which concludes that library employees are "municipal personnel" for purposes of the municipal civil service system statute (then 66.019 but since renumbered to 66.0509).²⁷ Further support for this proposition can be found in the fact that the legislature amended the statute after the attorney general's 1939 opinion to permit municipal governing bodies to exempt any librarians and assistants from a municipal civil service system.

Relying on the above, we have opined that a library board cannot enact a rule for library employees which is inconsistent with the terms and conditions of employment established by the governing body for all municipal employees.²⁸ For example, in an opinion written before the legislature limited municipal residency requirements,²⁹ we concluded that a municipal governing body's enactment of a residency requirement for municipal employees would apply to library employees.³⁰

Likewise, we have concluded that library employees are subject to the same rules concerning vacation schedules that apply to other municipal employees.³¹ The basis for that conclusion was that such regulations relate to the terms and conditions of employment, as opposed to compensation levels, and therefore are outside the purview of the library board. However, municipalities should be aware that the State of Wisconsin Department of Public Instruction (DPI), Division of Libraries and Technology, takes the position that the public library board determines the benefits for its employees and that these benefits can be the same as, greater or less than, benefits received by other municipal employees.³²

Most recently, we concluded that although a library board has the power to set compensation and duties for a library director, that authority does not include power to grant the library director a tenure right in her position with a five-year contract term or limit the library board's power to remove the library director at pleasure through a lump sum payment requirement if discharge is not for cause.³³ In informal correspondence, an assistant

attorney general reached the opposite conclusion.³⁴

IV. GOVERNING BODY CONTROL OVER PUBLIC LIBRARIES

Although the governing body controls municipal appropriations to the library, and the terms and conditions of employment for library employees, municipal library boards have nearly autonomous powers with respect to the operation and administration of municipal libraries.

Prior League opinions conclude that a municipal governing body may take greater control of public library administration by adopting a charter ordinance, pursuant to its constitutional home rule powers, altering ch. 43 and limiting the powers of the library board.³⁵

Municipalities should be aware, however, of the risk inherent in proceeding down such a path. First, there is no case law settling the issue. However, the Attorney General has concluded that the operation of municipal libraries is a matter of statewide concern and thus municipalities may not exercise their constitutional home rule powers to obtain greater control over

26. See Libraries 40.

27. 28 Op. Att'y Gen. 286 (1939).

28. See Libraries 30 and 40.

29. See Wis. Stat. sec. 66.0502 created by 2013 Wis. Act 20.

30. See Libraries 30.

31. See Libraries 40.

32. DPI opinion dated 12/6/1991 from DPI Assistant Superintendent, Division of Library Services to Menomonie City Attorney Kenneth Schofield.

33. Libraries 56.

34. Informal correspondence from Assistant Attorney General Thomas Creeron, III, dated 12/22/2006.

35. See Libraries 45.

municipal libraries by altering ch. 43.³⁶

Second, an exercise of home rule powers to assert more control over municipal libraries might jeopardize a library's ability to participate in a public library system. Wisconsin has 384 public libraries. All of Wisconsin's public libraries have voluntarily chosen to participate in one of the state's seventeen regional public library systems. These systems maintain certain standards and provide efficiencies through sharing and consolidation of services. Each public library system receives state aid for the operation and maintenance of the system pursuant to a formula set forth in sec. 43.24. In order to qualify for and maintain its eligibility for state aid, a public library system must meet certain requirements set forth under Wis. Stat. sec. 43.15.

According to John DeBacher, Director of Public Library Development, Department of Public Instruction (DPI), the Division for Libraries and Technology within DPI has, since 1989, been actively monitoring whether public libraries comply with public library system membership requirements under sec. 43.15(4)(c). Under that section, a municipal public library may participate in a public library system only if, among other things, it is established under ch. 43.³⁷ Public library systems may expel or reduce aids or services to a municipality which fails to meet this and other

requirements listed in sec. 43.15(4)(c). Sec. 43.18(2).

Also, since September 1, 1991, the Division for Libraries and Technology has been authorized to reduce aid to a public library system if the system or any participant of the system fails to meet the requirements of sec. 43.15(4). Sec. 43.24(3).

DPI's position is that if a municipality enacts a charter ordinance taking greater control of its municipal library, the municipal library is no longer "established" under ch. 43 and it is therefore ineligible to participate in a public library system.

According to Mr. DeBacher, since all municipal libraries participate in a public library system, they are all at risk of having state aid reduced or being expelled from a public library system if they adopt a charter ordinance taking greater control of the local public library.³⁸

Accordingly, municipalities should investigate and seriously consider the ramifications of adopting a charter ordinance asserting greater control over the municipal library before proceeding to enact such legislation.

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ALTHOUGH THE GOVERNING BODY CONTROLS MUNICIPAL APPROPRIATIONS TO THE LIBRARY, AND THE TERMS AND CONDITIONS OF EMPLOYMENT FOR LIBRARY EMPLOYEES, MUNICIPAL LIBRARY BOARDS HAVE NEARLY AUTONOMOUS POWERS WITH RESPECT TO THE OPERATION AND ADMINISTRATION OF MUNICIPAL LIBRARIES.

36. 76 Op. Att'y Gen. 203 (1987).

37. Sec. 43.15(4)(c).

38. Libraries 46.